

TOWN OF GOSHEN

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ROBERT P. VALENTINE, FIRST SELECTMAN

Testimony of:
Robert P. Valentine
First Selectman
Town of Goshen

Before the Committee on
GOVERNMENT ADMINISTRATION AND ELECTIONS
LOB Hearing Room 2A
Concerning R.B. 847

February 6, 2015

Good afternoon Senator Cassano, Representative Jutila and committee members. Thank you for the opportunity to testify on Raised bill 847. My name is Robert Valentine. I am the First Selectman of the Town of Goshen.

That there should be standards of conduct in municipal government should not be in question. What is in question is how those standards should be formulated, by whom, (locally or by State Office of Ethics) and how those standards should be enforced.

This issue is not new for this Committee, local officials or the legislature. And let us not confuse the all too many instances of public officials stealing large sums of money for their own benefit as an ethical lapse when they are in fact, criminal acts, no different than a bank teller who steals money from someone's bank account. In these instances much better financial checks and balances should be implemented in every municipality and those individuals should be dealt with harshly by the criminal justice system. As for municipal ethics, much discussion and work has been done with respect to this issue dating back to 1994.

P.A. 94-172 was passed giving the State Ethics Commission the responsibility to create a model code of ethics for municipal government. It also allowed State Ethics Commission to act on behalf of municipalities if requested. That provision of P.A. 94-172 was later rescinded in 1995 because of budget constraints. As a reference, I have attached correspondence of the State Ethics Commission to Special District President from Rachel S. Rubin Supervising Attorney.

The issue was again considered by the legislature in 2006 with a report by the Connecticut Office of State Ethics (OSE) entitled "Municipal Ethics and State Government: Four Approaches and their Application to Connecticut State Government, October 31, 2006", also attached.

On the approach of having OSE manage and be in charge of municipal ethics, the report states "one disadvantage of the unified approach is the cost to the State. Another disadvantage is that applying ethics laws on both the state and local level can result in needless overlap and confusion, because of the unique ethics needs found at different levels of government. Finally, state administration of local ethics laws may cause local citizens to feel that they have little or no power in how their municipal ethics laws are administered"

This issue again came to the forefront in 2008 with the creation of a Task Force on Municipal Ethics, per P.A. 07-201, co-chaired by Senator Gayle Slossberg and Representative James Spallone.

I, as First Selectman of Goshen, was honored to have been appointed to the task force representing municipal officials.

Over the course of several months, the Task Force conducted public hearings in several municipalities throughout the state. We received testimony from a variety of individuals from both large and small municipalities, from chief elected officials to average citizens.

The *Final Report* of the Task Force laid out in detail the work it had completed. I would also add that the co-chairs of the Task Force did an excellent job in bringing together Task Force members of varying backgrounds, citizens and elected officials to create a comprehensive report on this issue.

One very important finding of the Task Force as it would relate to R.B. 847 was that the "one size fits all" approach to municipal code of ethics is not a practical, workable solution."

As for R.B. 847, I would respectfully suggest that members of the GAE take the opportunity to read the Task Force's final report before taking action on this bill. Furthermore, please take into consideration the fact that Connecticut's 169 municipalities vary greatly in size and governmental structure, making a "one size fits all" approach impractical.

I have a very serious concern that if R.B. 847 is adopted as written, small municipalities such as Goshen will find it very difficult, if not impossible, to fill the many elected and appointed positions that make small town government work. For the most part, these positions are un-compensated, volunteer positions. Lastly, consider a substitute bill more in keeping with P.A. 94-172. We should allow municipalities the ability to choose a set of ethics standards that work for their community and decide how those standards will be enforced. If a municipality would prefer to have the Office of State Ethics create and enforce their code then that should be an option, not a requirement.

Thank you for this opportunity to address the GAE on this very important issue.

Respectfully,

Robert P. Valentine

Encl: Task Force on Municipal Ethics
Municipal Ethics and State Government
Model Code of Ethics for Municipalities and Special Districts... August 21, 1995

TASK FORCE ON MUNICIPAL ETHICS

Created Pursuant to
Public Act 07-201

Chairpersons:
Senator Gayle Slossberg
Representative James Spallone

Final Report

CHARGE

Section 1 of Public Act 07-201 established an eight member task force consisting of legislative appointees to study the Office of State Ethics' preliminary recommendations concerning the implementation of an ethics code for municipalities of the state. (*See Appendix 1 for Task Force Membership*). The act required the study to include the holding of hearings on the Office of State Ethics' preliminary recommendations as contained in such office's October 31, 2006 report to the joint standing committee of the General Assembly having cognizance of matters relating to ethics. (*See Appendix 2 for October 31, 2006 report of the Office of State Ethics*).

The October 31, 2006 report of the Office of State Ethics contained two preliminary recommendations. First, the office recommended that hearings be held to give the public at large an opportunity to contribute to the debate of how to address the issue of municipal ethics. Second, the office recommended that it develop a "best practices" ethics code which municipalities could voluntarily adopt. According to the October 31, 2006 report, the voluntary nature of such an approach would allow local governments to retain autonomy while avoiding a costly administrative impact on the state level.

METHOD

The task force met five times (includes one meeting to approve report) and held public hearings in the towns of West Haven, Westbrook and Waterbury. The committee received presentations from the Office of State Ethics, the Office of Legislative Research and the Connecticut Conference of Municipalities. The Office of State Ethics presented information to the committee concerning the components of the state code of ethics, the status of municipal codes of ethics, and options for the office's involvement in enforcing municipal ethics. Additionally, the Office of State Ethics provided the task force with an assessment of the fiscal impact that various legislative proposals concerning the enforcement of municipal ethics would have on the office. (*See Appendix 3 for Information Presented by the Office of State Ethics*). The Office of Legislative Research presented the task force with information from other states on how jurisdiction concerning municipal ethics is delegated and sample approaches to

municipal ethics administration and enforcement in other states. *(See Appendix 4 for Information Presented by the Office of Legislative Research)*. The Connecticut Conference of Municipalities presented the task force with information concerning its survey of municipalities on the issue of how municipal ethics is handled. *(See Appendix 5 for Information Presented by the Connecticut Conference of Municipalities)*. At the three public hearings, the task force received written and oral testimony from members of the public and municipal officials. The task force obtained samples of municipal codes of ethics which are provided for informational purposes only for members of the General Assembly and others utilizing this report. *(See Appendix 6 for sample municipal ethics codes)*.

FINDINGS

The task force finds that under the current voluntary law, approximately 124 of 169 towns have adopted some form of an ethics code. Approximately 70 municipalities have formed ethics commissions and another 78 have some other way of resolving ethics complaints. The methods used by such municipalities to hear and dispose of ethics complaints varies widely. In some municipalities there is a permanent board or commission that hears such complaints while other municipalities do not have a formal process for handling complaints.

From the public hearings held by the task force, it is found that, generally, private citizens testified in favor of having some means of submitting municipal ethics complaints and having these complaints resolved. The means favored by these private citizens varied. Some citizens indicated a desire to have such complaints heard and resolved by a board or commission on the town level that would be independent of the respective town officials. Other private citizens indicated a desire to have such complaints heard and resolved by the Office of State Ethics.

Additionally, based on the public hearing testimony by municipal elected officials, the task force finds that there are varying opinions on the need for and potential form of municipal ethics regulation. Generally, chief elected officials from small towns, especially those who testified at the Westbrook field hearing, expressed concern about the cost of municipal ethics regulation and the potential for abuse. Such officials were generally opposed to state-

mandated regulation. Additionally, elected and appointed officials from small towns expressed concern that requiring statements of financial interest from volunteers who serve on local boards and commissions would have a chilling effect on public service, and would make it more difficult than it already is to attract volunteers.

Overall, the task force finds that there is a wide range of opinion regarding structure and functioning of a state-wide municipal ethics system. The opinions received by the task force ranged from those who would make no changes to current law to those who would favor the Office of State Ethics handling all complaints from start to finish.

Accordingly, the task force finds that a one size fits all approach to a municipal code of ethics is not a practical, workable solution. Rather, sufficient flexibility and options must exist for towns in order to reflect the differences amongst the towns in terms of the size of such municipalities and the form of government in each such municipality.

FISCAL CONCERNS

The Task Force is aware that government at all levels is facing a fiscal crisis of historic proportions and that the state and nation are in the midst of a recession. As of the writing of this report, the Office of Fiscal Analysis calculates that the state is carrying a deficit of \$ 1.4 billion for FY 2009 (the current fiscal year), \$ 4 billion for fiscal year 2010 and \$ 4.7 billion for fiscal year 2011. The General Assembly is preparing a budget for FY 2010-2011 in that context. The Office of State Ethics has had \$ 384,000 trimmed from its budget in deficit reduction bills passed and signed into law in November 2008 and January 2009. Under these circumstances, the Task Force understands that new programs at the state level or new requirements at the local level are unlikely to be funded at this time. The Task Force's charge was to come up with recommendations for policy, and it has done so. It remains the task of the General Assembly to determine when such recommendations can be reasonably implemented.

RECOMMENDATIONS

The committee recommends the following concerning the implementation of an ethics code for municipalities of the state:

■ Municipalities should have the option to do one of the following three things within two years of the passage of the subject enabling legislation by the General Assembly: (1) Adopt a municipal code of ethics that, at a minimum, contains certain provisions listed below. Adoption of such code would require only a vote of the legislative body of such municipality, or in the case in which a town meeting is the legislative body, by the board of selectmen; (2) join a regional group of municipalities that has adopted a municipal code of ethics which includes, at a minimum, such standards; or (3) submit to a municipal code of ethics established and enforced by the Office of State Ethics. If a municipality fails to undertake either of the first two options by such date, the third option should automatically be activated. Such legislation should include a sample, but not a required, code of ethics that could be adopted by a municipality without any additional costs to such municipality.

■ The minimum provisions contained in any such municipal code of ethics shall include the following: (A) Conflict of interest provisions that prohibit a public official or employee from participating in a matter in which he or she has a personal or financial interest; (B) Disclosure and recusal provisions that require the written disclosure of conflicts of interest by public officials and employees and the recusal from participation in any decision-making concerning the matter at hand; (C) Gift provisions that prohibit public officials and employees from soliciting or accepting anything of value that could reasonably be expected to influence the actions or judgment of such official or employee; (D) Use of Property provisions that prohibit a public official or employee from using town property in any manner that benefits himself or herself to a degree that is greater than a member of the general public when such property is made available to the general public; (E) Representation of Private Interests provisions that prohibit representing a private interest before the board or commission on which such public official serves. Such provision would extend to a period of six months after the official terminated his or her service on such board; and (F) Use of Position provisions that prohibit the use of information acquired through a public official's or employee's position to further such official's or employee's own financial or personal interests.

■ The task force recommends that any such municipal code of ethics be applicable to all elected or appointed officials and all part-time or full-time employees of such municipality, whether paid or

volunteer. The task force recommends that the General Assembly carefully consider the implications of existing collective bargaining agreements or departmental codes when developing enabling legislation.

The task force makes the following recommendations with regard to the issue of municipal ethics enforcement:

- Municipalities should have options with respect to enforcement. By a date certain, each municipality should have to do one of the following, or a combination thereof: (1) Establish an ethics commission, (2) join a regional ethics commission, or (3) have the Office of State Ethics handle enforcement. If the town fails to enact either of the first two options, the third option should go into effect automatically after such date. The task force is concerned about potential consequences of appeals to the Office of State Ethics in terms of cost, burden and consistency. If the General Assembly provides for such appeals in enabling legislation, the task force suggests that such appeals be made on the record. The task force thinks that it is important to support and not undermine the difficult work of local ethics commissions. The authority of any such commission to levy a fine should be augmented to increase the amount of such permissible fine. However, municipal ethics commissions should not have the authority to remove any public official from office. A municipal ethics commission, following a full hearing on the matter by such commission, should have the ability to recommend to the appropriate authority, as determined by law, that an appointed official or employee or an elected official or employee be removed. A municipal ethics commission should have the authority to refer findings concerning any such recommended removal to the Chief State's Attorney's Office.

- The task force recommends that any municipal ethics enforcement body, municipal or regional, have: (1) Both the power and procedures in place for receipt of citizen complaints and adjudication and resolution of such complaints, and (2) the authority to issue advisory opinions.

- The task force recommends that special districts such as fire or water districts, which are not municipalities, be subject to any such municipal ethics code and enforced by a municipal board of ethics. Additionally, the task force recommends that the General Assembly

evaluate how other political subdivisions of the state, which are not municipalities, be regulated in the area of ethics.

■ The task force recommends that the Office of State Ethics send out a reminder to all municipalities on the first anniversary of any such enabling legislation of such legislation's key provisions. On the second anniversary of such legislation, the Office of State Ethics should survey each municipality to determine which municipalities have met the requirements of the legislation. The task force further recommends that any municipality that meets the standards of the enabling legislation as to enforcement not be subject to state enforcement of its code and that any municipality that terminates its code should be subject to state enforcement of its code.

Municipal Ethics and State Government:
Four Approaches and Their Application
To Connecticut State Government

October 31, 2006

STATEMENT OF PURPOSE

At present, the Connecticut Office of State Ethics (OSE) does not play a role in the drafting or administration of municipal ethics Codes and Statutes in Connecticut. Nevertheless, the OSE receives complaints about alleged violations of municipal ethics codes at least weekly. The majority of these local-level complaints do not relate to problems that implicate ethics issues. Rather, in many instances, they concern conduct that may be actionable under civil or even criminal laws. In recent Connecticut General Assembly sessions, legislators have proposed that the OSE become involved with municipal ethics. At the request of State Representative Christopher L. Caruso (D-Bridgeport), the OSE examined how some other state governments address municipal ethics. OSE's findings will be reported to the General Assembly.

The methods employed by other states to address ethics on a municipal level generally fall into four categories that are discussed in detail in the following pages. These categories represent four approaches to municipal ethics: (1) state ethics law includes municipalities, (2) partial inclusion of municipal ethics by the state, (3) application of strictest code, and (4) model code.

INTRODUCTION

Current Regulation of Municipal Ethics in Connecticut

Connecticut cities and towns have recently dealt with myriad highly-publicized ethics problems. In response, in 2004, Connecticut Common Cause prepared a municipal ethics survey that looked at all 169 towns in our state. The survey revealed that 107 out of 169 total municipalities in Connecticut (i.e., 59%) have some version of an ethics code in existence for

their officials and employees. The report portion of the Common Cause survey states, "A code of ethics is only as strong as the provisions it contains." Even with such a code in place, these municipalities experienced well-documented ethics troubles involving matters pertaining to school construction¹, housing appraisals², zoning board and selectman conflicts of interest^{3,4} and gifts for, among other things, municipal soccer fields⁵.

Furthermore, there exists great variation among municipal codes regarding regulated conduct, prohibitions, investigations and enforcement. For example, in the Common Cause study cited above, only 10 (6%) of the municipalities with ethics codes were found to require statements of financial interests.⁶ Approximately 54 percent of Connecticut municipalities' codes contained gift provisions⁷ and also required public officials to disclose conflicts of interest.⁸ Only 38 percent of municipal codes prohibited employees subject to such codes from appearing before the city or town for their private interests.⁹ Because of the very limited reach of some towns' codes, Common Cause designated 17 of the 107 towns with municipal codes as having only partial codes.

FOUR BASIC APPROACHES TO STATE INVOLVEMENT IN MUNICIPAL ETHICS CODES

Some states¹⁰ have employed oversight by their state-level ethics commission rather than solely rely on local governments to devise, administer and enforce their own ethics codes. There are four primary approaches by which state government has dealt with municipal ethics.

Approach 1: State Ethics Law Includes Municipalities (Alabama)

In the first approach, the state government includes municipal public officials and/or employees in the pool of individuals subject to the state ethics code. Alabama's Code of Conduct, for example, defines those who are subject to such code as follows:

- (24) Any person elected to public office, whether or not that person has taken office, by the vote of the people at state, county or municipal level of government or their instrumentalities, including governmental corporations, and any person appointed to a position at the state, county or municipal level of government or their instrumentalities, including governmental corporations. For purposes of this chapter, a public official includes the chairs and vice-chairs or the equivalent offices of each state political party as defined in Section 17-16-2

Alabama's Code of Ethics §§ 36-25-1 through 36-25-30 was enacted in 1975 and specifically includes all levels of government in its provisions. The primary advantage of this approach is that enforcement, education and disclosure regulations are applied uniformly across all levels of government. One disadvantage of the unified approach is the cost to the state. Another disadvantage is that applying ethics laws on both the state and local level can result in needless overlap and confusion, because of the unique ethics needs found at different levels of government. Finally, state administration of local ethics laws may cause local citizens to feel that they have little or no power in how their municipal ethics laws are administered.

Approach 2: Partial Inclusion of Municipal Ethics by the State (Massachusetts and Texas)

The Commonwealth of Massachusetts subjects local jurisdictions only partially to the state ethics law. Included in the Massachusetts ethics law are provisions for gifts, post-state employment, financial disclosure, conflicts of interest and outside employment that pertain to

local and state-level public officials and employees.¹¹ Moreover, some provisions apply only to local governments and not to the state government. Just as in the first approach, although making municipalities subject to the state law ensures a measure of uniformity across the state, it creates an increased financial burden on the state. For example, in Massachusetts there are 351 municipalities. The Massachusetts State Ethics Commission (MASEC) alone interprets and enforces the ethics laws for both state and local compliance.

Another state that uses this partial approach is Texas, although with a slightly different administrative structure. In Texas, violations at the municipal level are handled by the Municipal Affairs section of the Office of the Attorney General, in accordance with the Texas Penal Code. The Texas Ethics Commission, which deals with state level ethics violations, does not get involved with municipalities, except that it has enforcement authority for campaign finance and political advertising issues at both the state and municipal levels. Even though there is an ethics code, the Texas Attorney General's office appears to rely primarily on the Texas Penal Code, Chapter 36, to deal with issues of Bribery, Gift and Honorarium laws, and Chapter 39, covering Misuse of Government Resources.

Approach 3: Application of Strictest Code (Delaware and New Jersey)

A third approach, utilized in Delaware, requires municipalities to follow the state's ethics code only if the city or town has not developed a code of its own that is at least as stringent as the state's law. In 29 Del. C., Chapter 58 this "minimum standard" is clearly stated:

Code of Conduct – Ethical standards for all State Executive branch employees (rank and file), officers (Senior level & Elected officials) and honorary State officials (appointees to State Boards & Commissions). The standards apply to all local governments unless they adopt their own Code of Conduct which this Commission must approve as being at least as stringent as the State law.

By requiring that municipalities with their own codes adhere to a minimum standard (i.e., the state's code), the state encourages acceptable local ethics input and policies while minimizing state-level administration. But in fact, only seven of Delaware's 59 municipalities have drafted their own ethics laws, thus creating a burden on state government. In a conversation with a staff member at the Delaware Public Integrity Commission, a commonly-stated reason for this municipal inaction is the belief at the local level that a state agency will handle issues in a less biased manner than would local appointees.

A potential pitfall with this approach lies in the differences inherent between municipal and state ethics issues. For example, in Delaware, the Public Integrity Commission has had to address an abundance of land-use concerns which fall outside the realm of ethics law. Further, the Public Integrity Commission noted that enforcement often becomes backlogged due to insufficient attorney staffing. Attorney Janet Wright, Public Integrity Commission Counsel, stated that at the state-government level alone, she is responsible for education, compliance and enforcement for 58,000 employees and public officials. Because her staff consists of only one Administrative Assistant, it is unlikely that many (if any) ethical violations on the local level are addressed.

A similar approach is used in New Jersey, where municipalities and counties are addressed in N.J. Stat. § 40A:9-22.4. This separate statute tasks the Local Finance Board in the Division of Local Government Services, Department of Community Affairs, to "govern and guide" local government officers and employees. Here, as in Delaware, there is a caveat stating that the statute applies to: "local government officers and employees . . . who are not otherwise regulated by a county or municipal code of ethics promulgated by a county or municipal ethics board in accordance with the provisions of this act." In practice, only 42 out of 587 jurisdictions

in New Jersey have chosen to promulgate and enforce their own ethics codes. Paul Contillo, a prominent retired state legislator who also once served on the state's Local Government Finance Board, was quoted as calling the Board "a farce for enforcement."¹² Although it might seem that having a separate agency tasked only to administer municipal ethics codes and issues would result in efficiency and effectiveness, Contillo indicated in a newspaper interview that the opposite has occurred. Since 1991, the state Board has not pursued any complaints to completion relating to improper gifts received by city or town officials in exchange for influence. Echoing the Common Cause survey, Contillo further states, "The enforcement part of the law is the will. And there is no will on the Local Government Finance Board."

Approach 4: Model Code (Tennessee)

A fourth approach, only slightly different from the third, is being implemented currently in Tennessee. The new Tennessee law mandates that municipalities must adopt the Municipal Technical Advisory Service (MTAS) model code of ethics by July 1, 2007. Otherwise, they must draft a new local ordinance that meets the standards of the model code. The penalty for municipal governing bodies that do not comply is the ouster of local officials from office. The MTAS is a joint project of the University of Tennessee and the Tennessee Municipal League.

This model code gives municipalities substantive guidance without creating significant oversight burdens for the state. However, the mechanics of implementation have given rise to complaints from municipalities about duplication and waste of time and money. This is because municipalities cannot submit their existing codes for approval without significant readjustment to meet the state's standards and to adopt new effective dates."¹³ Those localities that opt for accepting the MTAS Model Code must simply send in a written statement that they have adopted

said code and provide the date of adoption. Some municipalities have complained that reworking their existing ethics ordinances to comport with the MTAS Model Code is too onerous and almost "forces" them to choose the quicker, cheaper path of adopting the MTAS Code.

Tennessee's state provisions cover municipalities in two main areas: rules relating to gifts and disclosure of personal interests. On the enforcement side, the Model Code (Section 10) provides for enforcement by the City Attorney of the municipality raising the issue. A concern here is providing smaller jurisdictions with an alternative if they do not have a City Attorney. It should also be noted that the potential for conflicts of interest is great within smaller municipalities.

CONCLUSIONS

In all the states reviewed, as well as in the Common Cause study, citizens' preference appears to strongly favor local government control of the formation and administration of ethics laws. Many local council members have also debated whether jurisdiction concerning ethics matters should rest with an independent regional or local ethics commission.¹⁴ Finally, trying to adopt a workable system to draft statutes, resolve local ethics issues and enforce a statewide code can create expense and confusion when regulators at the state level must take into account the disparities among the ethics concerns of large urban areas, affluent suburbs, and small rural towns.

QUESTIONS THAT MUST BE ANSWERED BY THE GENERAL ASSEMBLY

In dealing with the issue of the involvement of state government in local ethics regulation, the General Assembly must consider the following questions:

1. Would a system controlled by a state agency such as the Office of State Ethics be considered an interference rather than an assistance to municipal governments?
2. Would any state agency intervention or oversight interfere with or diminish already existing municipal ethics ordinances?
3. Who would bear the burden of the costs of municipal ethics administration, which, among others, include:
 - a. drafting the statutes;
 - b. educating the regulated parties;
 - c. administering the regulations; and
 - d. enforcement (auditing, investigating, holding hearings and collecting fines).

OSE PRELIMINARY RECOMMENDATIONS

The Office of State Ethics recommends that hearings be held to give the public at large an opportunity to contribute to this debate. Besides the general public, those encouraged to participate in these hearings should include representatives from similarly situated states, such as Massachusetts, experts from the college and university communities, and civic-minded members of the Connecticut bar. In addition, all affected branches of state government should also be consulted – notably the State’s Attorney and Attorney General’s Offices. We suggest that the hearings be completed by December 31, 2007, so that the best recommendations can be made to the General Assembly. The hearings would serve to develop a workable format for the relationship between state government and municipalities relating to the administration of ethics codes.

Beyond hearings for public comment and debate, it is the opinion of the Office of State Ethics that a workable solution may lie in OSE’s development of a “best practices” ethics code, which municipalities may voluntarily adopt. This will provide the guidance towns and municipalities need in order to move towards more transparency and consistency of standards in

municipal government. The voluntary nature of this approach would allow local governments to retain their autonomy while avoiding a costly impact at the state level.

Footnotes

¹ Bill Cummings, *Court Decision Points to Corruption in School Deal*, CONNECTICUT POST, June 7, 2006.

² Joseph Hachey, *Conflict of Interest*, JOURNAL INQUIRER, June 6, 2006.

³ Tommy Valuckas, *Watertown Council Gets Involved in Ethics Issue*, WATERBURY CONNECTICUT REPUBLICAN AMERICAN, May 18, 2006.

⁴ *In Case Against Marilyn Gould*, WILTON BULLETIN, July 13, 2006. (Second Selectman Gould was found not to have violated the municipality's Code of Ethics.)

⁵ Brian Gioiele, *Soccer Field Lights: Policy Troublesome But Boars OKS*, WESTON FORUM, May 17, 2006.

⁶ *Id.*

⁷ *Id.*

⁸ *Id.*

⁹ *Id.*

¹⁰ A study from the Council on Governmental Ethics Laws (COGEL) Blue Book 2005 serves as the basis of some of the following information. The COGEL study sample included only those state government agencies that self-reported their direct involvement in municipal ethics. The sample also purposely excluded states whose primary involvement in municipal ethics dealt with campaign finance. The final sample in the COGEL study included 15 states, several of which are selected for discussion below based on their implementation of one or more of the four models of approach considered worthwhile for exploration in Connecticut.

¹¹ See MASS. GEN. LAWS ch. 268A §§ 1-25 (2006).

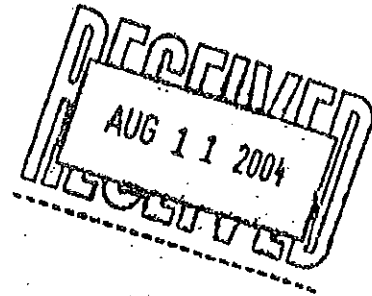
¹² Camden Staff COURIERPOST ONLINE, *Former Officials Say Whole Political System Corrupted by Campaign Fundraising*, Oct. 22, 2000. <http://www.southjerseynews.com/camden/m102200c.html>.

¹³ Under Public Chapter No. 1 of the Extraordinary Session of the 2006 General Assembly, each municipality must newly adopt an ethics code unless it opts to endorse the MTAS model code.

¹⁴ Lisa Backus, *Town Council Members Take a Close Look at Ethics Code*, FARMINGTON POST, July 7, 2006, at 1.



STATE OF CONNECTICUT
STATE ETHICS COMMISSION



TO: Special District President

FROM: Rachel S. Rubin, Supervising Attorney

SUBJECT: Model Code of Ethics for Municipalities and
Special Districts

DATE: August 21, 1995

Pursuant to Public Act 94-172, The State Ethics Commission was mandated to develop a model code of ethics for Connecticut's municipalities and special districts and to administer and enforce this Code for any municipality or special district which elected to adopt the model law and accept the Commission's jurisdiction. However, because of the need to increase the budget and staff of the State Ethics Commission to carry out this new authority, the General Assembly, during the 1995 session, amended the 1994 Act. As a result, the State Ethics Commission is now only authorized to draft and distribute the Model Code; leaving each municipality and special district with the option to adopt the Code and with the responsibility to administer and enforce whatever provisions it decides to enact.

As a consequence, the enclosed Code was drafted to incorporate a municipal ethics commission; and sets forth procedures which should facilitate local administration and enforcement of the model law provisions. It is anticipated that the State's municipalities and special districts (which, obviously, vary widely in size and resources) will use the Model Code as a guide; adopting it in whole or in part, and modifying it as deemed appropriate to address local concerns. Please understand, if you decide to adopt the Model Code, or any part thereof, the State Ethics Commission will have no authority to enforce, interpret or advise your local Ethics Commission.

In reviewing the Model Code, you may recognize that many of the sections are based on those currently contained in the State Code of Ethics. Certain of the requirements, however, are stricter. Finally, a few of the recommended model provisions (see nos. 1-4, infra) are inconsistent with the current state

laws applicable to municipalities and cannot be implemented by your locality without amendment of the underlying state statutes. Specifically, please note the following:

1. Conflicts Of Interests

Conn. Gen. Stat. §7-148h(b) provides that an elected municipal official in a town which has adopted an ethics board "has an interest which is in substantial conflict with the proper discharge of his duties of employment in the public interest and of his responsibilities as prescribed by the laws of this state, if he has reason to believe or expect that he, his spouse, a dependent child, or a business with which he is associated, as defined in section 1-79, will derive a direct monetary gain or suffer a direct monetary loss, as the case may be, by reason of his official activity. Any such elected municipal official does not have an interest which is in substantial conflict with the proper discharge of his duties in the public interest and of his responsibilities as prescribed by the laws of this state, if any benefit or detriment accrues to him, his spouse, a dependent child, or a business with which he, his spouse or such dependent child is associated as a member of a profession, occupation or group to no greater extent than to any other member of such profession, occupation or group. Any such elected municipal official who has a substantial conflict may not take official action on the matter."

The Model Code, however, establishes a stricter conflict of interest standard (see §1-7(c)) and would prohibit official action which benefits the individual, his or her immediate family, or business as a member of a profession, occupation or group. Thus, for example, under state law the spouse of a teacher serving on the town board of education would be able to vote on the municipal teachers' contract, since all teachers would be similarly affected as a group. The Model Code, however, would prohibit such action because the board member's immediate family had a financial interest in the decision. Only when the matter "...involves a determination of general policy and the interest is shared with a substantial segment of the population of the municipality" would such official action be allowed.

2. Penalty Section

At present, Conn. Gen. Stat. §7-148(b)(10)(A) authorizes municipalities to impose civil penalties for ethics violations not to exceed one hundred dollars. The Model Code, however,

would allow for fines of up to \$1,000 per violation. The penalty section (§1-6) also provides for other sanctions which may require both amendment of state statute and, possibly, modification of municipal labor agreements (e.g., dismissal from employment).

3. Appeals

As a concomitant provision to the above penalty section, the Model Code proposes that final decisions of municipal ethics commissions be appealable to Superior Court. In essence, state law will not permit municipalities to impose significant administrative sanctions, unless the affected person has the right to seek appellate review.

4. Procedures

Pursuant to Conn. Gen. Stat. §7-148h(a), any municipality which has an ethics commission must comply with provisions of Conn. Gen. Stat. §1-82a when investigating allegations of misconduct. Section 1-82a requires, in part, that the entire matter be kept confidential until there has been a finding of probable cause. This provision contemplates that (as at the State level) there will be a two-stage process for complaints: a. a probable cause hearing; b. followed by a public hearing to determine whether or not a violation has occurred. The Model Code, however, contains a simplified, one-stage hearing procedure. It does, nonetheless, maintain the strict confidentiality standard embodied in §1-82a and, as a consequence, requires that the entire matter be confidential until there has been a finding of a violation.

Additionally, we wish to bring to your attention two other aspects of the model law:

5. Statements of Financial Interests

A provision in the Model Code (§1-10) requires the filing of annual statements of financial interests by public officials and designated employees. It is anticipated that each municipality will determine whether these statements are, in fact, necessary. For example, smaller towns and special districts may not find the administration of this filing requirement to be a cost-effective use of resources; however, larger towns and cities may find the collection of this information to be beneficial.

6. Special Districts.

The drafters of the Model Code have concluded that the State's special districts do not, in general, have the resources to administer separate ethics commissions and enforce separate ethics codes. We recommend, therefore, that each special district work with the municipality in which it is located to establish an ethics commission and code and, thereafter, operate under this municipal jurisdiction.

In closing, on behalf of the State Ethics Commission, I want to take this opportunity to thank those municipalities and special districts that responded to our Model Code survey and/or otherwise contributed to the completion of this project. It is hoped, at a minimum, that the Model Ethics Code will foster an enhanced interest in and discussion of ethical concerns at the local level.

CODE OF ETHICS
FOR MUNICIPALITIES AND SPECIAL DISTRICTS
MODEL CODE

Statement of Purpose

Public office is a public trust. The trust of the public is essential for government to function effectively. Public policy developed by government officials and employees affects every citizen of the municipality, and it must be based on honest and fair deliberations and decisions. This process must be free from threats, favoritism, undue influence, and all forms of impropriety so that the confidence of the public is not eroded. By enacting this Code, this municipality seeks to avoid any loss of trust and to maintain and increase the confidence of our citizens in the integrity and fairness of their government.

Section 1-1. Definitions.

- (a) "Business" means any entity through which business for profit or not for profit is conducted including a corporation, partnership, proprietorship, firm, enterprise, franchise, association, organization, or self-employed individual.
- (b) "Business with which he is associated" means a business of which the person or a member of his immediate family is a director, officer, owner, employee, compensated agent, or holder of stock which constitutes five percent or more of the total outstanding stock of any class.
- (c) "Confidential information" means information, whether transmitted orally or in writing, which is obtained by reason of the public position or office held and is of such nature that it is not, at the time of transmission, a matter of public record or public knowledge.
- (d) "Commission" means the municipal ethics commission established in section 1-2.
- (e) "Financial interest" means any interest with a monetary value of \$100 or more or which generates a financial gain or loss of \$100 or more in a calendar year.

(f) "Gift" means anything of value, including entertainment, food, beverage, travel, and lodging given or paid to a public official or public employee to the extent that consideration of equal or greater value is not received. A gift does not include:

(1) a political contribution otherwise reported as required by law or a donation or payment as described in subdivision (9) or (11) of subsection (b) of 9-333b;

(2) services provided by persons volunteering their time;

(3) a commercially reasonable loan made on terms not more favorable than loans made in the ordinary course of business;

(4) a gift received from (A) an individual's spouse, fiancé or fiancée, (B) the parent, brother or sister of such spouse or such individual, or (C) the child of such individual or the spouse of such child;

(5) goods or services which are provided to the municipality and facilitate governmental action or functions;

(6) a certificate, plaque or other ceremonial award costing less than one hundred dollars;

(7) a rebate or discount on the price of anything of value made in the ordinary course of business without regard to that person's status;

(8) printed or recorded informational material germane to governmental action or functions;

(9) items of nominal value, not to exceed ten dollars, containing or displaying promotional material;

(10) an honorary degree bestowed upon a public official or public employee by a public or private university or college;

(11) a meal provided at an event and/or the registration or entrance fee to attend such an event, in which the public employee or public official participates in his official capacity;

(12) a meal provided in the home by an individual who resides in the municipality;

(13) gifts in-kind of nominal value not to exceed \$25.00 tendered on gift-giving occasions generally recognized by the public including Christmas, Hanukkah, birthdays, the birth or adoption of a child, weddings, confirmations or bar/bat mitzvahs, provided the total value of such gifts in any calendar year do not exceed fifty dollars.

(g) "Immediate family" means any spouse, child or dependent relative who resides in the individual's household.

(h) "Individual" means a natural person.

(i) "Individual with whom one is associated" means an individual with whom the person or a member of his immediate family mutually has an interest in any business.

(j) "Official responsibility" means the direct administrative or operating authority, whether intermediate or final and whether exercisable personally or through subordinates, to approve, disapprove, or otherwise direct government action.

(k) "Person" means an individual, sole proprietorship, trust, corporation, union, association, firm, partnership, committee, club or other organization or group of persons.

(l) "Personal interest" means an interest in any action taken by the municipality in which an individual will derive a nonfinancial benefit or detriment but which will result in the expenditure of municipal funds.

(m) "Public employee" means a person employed, whether part-time or full-time, by the municipality or a political subdivision thereof.

(n) "Public official" means an elected or appointed official, whether paid or unpaid or full or part-time, of a municipality or political subdivision thereof, including candidates for the office; and shall also include a district officer elected pursuant to Conn. Gen. Stat. §7-327.

(o) "Special district" means a district established pursuant to Conn. Gen. Stat. §7-324.

(p) "Municipality" shall include any special district contained therein.

Section 1-2. Municipal ethics commission. Members:

appointment; qualifications; vacancies; political activity.
(a) There shall be a municipal ethics commission consisting of five members. The members shall be appointed by unanimous vote of the Board of Selectmen [Town Council] for a term of three (3) years, except that, of the initially appointed members, one (1) shall serve for one (1) year, two (2) for two (2) years, two (2) for three (3) years. No individual shall be appointed to more than one three-year term, provided that members may continue in office until a successor has been appointed. No more than three shall be members of the same political party.

(b) All members shall be electors of the municipality. No member shall (1) hold or campaign for any public office; (2) have held public office or have been a candidate for public office for a two-year period prior to appointment; (3) hold office in any political party or political committee; or (4) serve as a member of any other municipal agency.

(c)(1) Although any member or employee of the Commission shall have an unrestricted right to vote, make political contributions, attend fundraising or other political events, no member or employee shall publicly support any candidate for any municipal office subject to the Commission's jurisdiction. An individual would be publicly supporting a candidate by, for example, volunteering as a campaign worker, giving a speech at a political event or formally endorsing a candidate. (2) No candidate for political office may disseminate information which indicates that a Commission member or employee supports his or her candidacy.

(d) The commission shall elect a chairperson who shall preside at meetings of the commission and a vice-chairperson to preside in the absence of the chairperson. Three members shall constitute a quorum. A majority vote of the commission shall be required for action of the commission. The chairperson or any three members may call a meeting.

Section 1-3. Duties of commission re reports, advisory opinions, memoranda, and regulations. Employment of necessary staff.

(a) The commission shall: (1) Compile and maintain a record of all reports, advisory opinions, statements, and memoranda filed by and with the commission to facilitate public access to such reports and statements; (2) issue advisory opinions with regard to the requirements of this code upon the request of any person. Advisory opinions rendered by the commission, until amended or revoked, shall be binding on the commission and shall be deemed to be final decisions of the commission. Any advisory opinion concerning the person who requested the opinion and who acted in reliance thereon, in good faith, shall be an absolute defense in any matter brought under the provisions of this code; (3) report annually on or before February 1 to the [Board of Selectman or Town Council or Special district board] summarizing the activities of the commission.

(b) The commission may adopt, after a public hearing, rules and regulations not inconsistent with this Code for the administration and implementation of the Code.

(c) The commission may employ necessary staff or outside counsel within available appropriations.

Section 1-4. Complaints. Procedures. Time limits.
Investigation; notice; hearings. Damages for complaints without
foundation.

(a)(1) Upon the complaint of any person on a form prescribed by the commission, signed under penalty of false statement, or upon its own complaint, the commission shall investigate any alleged violation of this code. (2) Not later than ten (10) days after the receipt or issuance of such complaint, the commission shall provide notice of such receipt or issuance and a copy of the complaint by registered or certified mail to any respondent against whom such complaint is filed and shall provide notice of the receipt of such complaint to the complainant. (3) If the complaint has been filed by a member of the public, the commission shall review the complaint to determine whether or not the allegations contained therein constitute a violation of any provision of the Code. If the commission determines that the complaint does not allege sufficient acts to constitute a violation, the commission shall dismiss the complaint and duly notify the complainant and respondent by registered or certified mail. (4) If the commission determines that the complaint alleges sufficient acts to constitute a violation, then within thirty (30) days after so determining, the commission shall fix a date for the commencement of the hearing on the allegation contained therein. The hearing date regarding any complaint shall be not more than sixty (60) days after the filing of the complaint.

(b)(1) In the conduct of its investigation of an alleged violation of this code, the commission shall have the power to hold hearings, administer oaths, examine witnesses, receive oral and documentary evidence, subpoena witnesses, and require the production for examination by the commission of any books and papers which the commission deems relevant in any matter under investigation or in question. In the exercise of such powers, the commission may use the services of the municipal police, who shall provide the same upon the commission's request. (2) The respondent shall have the right to appear and to be represented by legal counsel and to examine and cross-examine witnesses.

(c) The commission shall make no finding that there is a violation of any provision of the code except upon the concurring vote of at least four of its members.

(d) Any hearing conducted by the commission shall be governed by the administrative rules of evidence.

(e) No complaint may be made under this code except within five years next after the violation alleged in the complaint has been committed.

(f) No person shall take or threaten to take official action against an individual for such individual's disclosure of information to the commission under the provisions of this code. After receipt of information from an individual, the commission shall not disclose the identity of such individual without his consent unless the commission determines that such disclosure is unavoidable during the course of an investigation.

Section 1-5. Confidentiality of complaints, evaluations of possible violations and investigations. Publication of findings.

(a) Unless the commission makes a finding of a violation, a complaint alleging a violation shall be confidential except upon the request of the respondent.

(b) Prior to the filing of a complaint, the commission may conduct a preliminary investigation to determine whether the filing of a complaint is warranted. This preliminary investigation shall be confidential except upon the request of the respondent. If the investigation is confidential, any allegations and any information supplied to or received from the commission shall not be disclosed during the investigation to any third party by a complainant, respondent, witness, designated party, or commission or staff member.

(c) If the commission makes a finding of no violation, the complaint and the record of its investigation shall remain confidential, except upon the request of the respondent. No complainant, respondent, witness, designated party, or commission or staff member shall disclose to any third party any information learned from the investigation, including knowledge of the existence of a complaint, which the disclosing party would not otherwise have known. The commission shall inform the complainant and the respondent of its finding by registered or certified mail not later than three business days after termination of the hearing or investigation.

(d) The commission shall make public a finding of a violation not later than five business days after the termination of the hearing. At such time, the entire record of the investigation shall become public. The commission shall inform the complainant and the respondent of its finding and provide them a summary of its reasons for making such a finding by registered or certified mail not later than three business days after termination of the hearing.

(e) Any respondent aggrieved by a decision of the commission regarding a finding of a violation may, within thirty days, take an appeal to the superior court for the judicial district in which the municipality is located.

Section 1-6. Penalties

(a) Violation of any provision of this Code shall constitute grounds for, and may be punished by (1) public censure and reprimand; (2) in the case of a public employee, dismissal from employment or suspension from employment for not more than 90 days without pay; (3) a civil penalty of not more than \$1,000 per violation; or (4) restitution of any pecuniary benefits received because of the violation committed.

Section 1-7. Conflicts of interest.

(a) No public employee or public official shall engage in or participate in any business or transaction, including outside employment with a private business, or have an interest, direct or indirect, which is incompatible with the proper discharge of his official responsibilities in the public interest or which would tend to impair his independent judgment or action in the performance of his official responsibilities.

(b)(1) No public employee or public official shall solicit or accept any gift from any person which to his knowledge is interested in any pending matter within such individual's official responsibility. (2) If a prohibited gift is offered, he must refuse it, return it, pay the donor the full value of the gift, or donate it to a non-profit organization provided he does not take the corresponding tax write-off. Alternatively, it may be considered a gift to the municipality provided it remains in the municipality's possession permanently.

(c)(1) A public employee or public official shall refrain from voting upon or otherwise participating in any matter on behalf of the municipality if he, a business with which he is associated, an individual with which he is associated, or a member of his immediate family, has a financial or personal interest in the transaction or contract, including but not limited to the sale of real estate, material, supplies or services to the municipality. (2) If such participation is within the scope of the public employee's or public official's official responsibility, he shall be required to provide written disclosure, which sets forth in detail the nature and extent of such interest, to the Commission. (3) Notwithstanding the prohibition in subsection (c)(1), a public employee or public official may vote or otherwise participate in a matter if it involves a determination of general policy and the interest is shared with a substantial segment of the population of the municipality.

(d)(1) Except for a public official who receives no compensation for his service to the municipality other than per diem payments and reimbursement of expenses, no public employee or public official shall appear on behalf of private interests before any board, agency, or committee of the municipality.

(2) Except for a public official who receives no compensation for his service to the municipality other than per diem payments and reimbursement of expenses, no public employee or public official shall represent private interests against the interest of the municipality in any litigation to which the municipality is a party.

(e) Nothing contained in this code shall prohibit or restrict a public employee or public official from appearing before any board or commission of the municipality on his own behalf, or from being a party in any action, proceeding or litigation brought by or against the public employee or public official to which the municipality is a party.

(f) No public employee or public official shall disclose confidential information concerning municipal affairs, nor shall he use such information for the financial interests of himself or others.

(g) No public employee or public official shall request or permit the use of municipal-owned vehicles, equipment, facilities, materials or property for personal convenience or profit, except when such are available to the public generally or are provided as municipal policy for the use of such public employee or public official in the conduct of official business.

(h) No public employee or public official, or a business with which he is associated, or member of his immediate family shall enter into a contract with the municipality unless it is awarded through a process of public notice and competitive bidding.

(i) No public employee or public official may use his position or office for the financial benefit of himself, a business with which he is associated, an individual with which he is associated, or a member of his immediate family.

(j) No public employee or public official shall accept a fee or honorarium for an article, appearance or speech, or for participation at an event, in his official capacity.

(k) No public employee or public official, or member of such individual's immediate family or business with which he is associated, shall solicit or accept anything of value, including

but not limited to, a gift, loan, political contribution, reward or promise of future employment based on any understanding that the vote, official action or judgment of the public employee or public official would be or had been influenced thereby.

Section 1-8. Paid consultants of the municipality.

(a)(1) No paid consultant of the municipality shall represent a private interest in any action or proceeding against the interest of the municipality which is in conflict with the performance of his duties as a consultant. (2) No paid consultant may represent anyone other than the municipality concerning any matter in which he participated personally and substantially as a consultant to the municipality. (3) No paid consultant shall disclose confidential information learned while performing his duties for the municipality nor shall he use such information for the financial interests of himself or others.

Section 1-9. Former public employees/officials.

(a) No former public employee or public official shall appear for compensation before any municipal board or agency in which he was formerly employed at any time within a period of one year after termination of his service with the municipality.

(b) No former public employee or public official shall represent anyone other than the municipality concerning any particular matter in which he participated personally and substantially while in municipal service.

(c) No former public employee or public official shall disclose or use confidential information acquired in the course of and by reason of his official duties, for financial gain for himself or others.

(d) No former public employee or public official who participated substantially in the negotiation or award of a municipal contract obliging the municipality to pay an amount of \$100,000 or more, or who supervised the negotiation or award of such a contract shall accept employment with a party to the contract other than the municipality for a period of one year after such contract is signed.

Section 1-10. Statements of financial interests. Filing requirements.

(a)(1) All public officials and such public employees as the Mayor [First Selectman] shall designate shall file, under penalty of false statement, a statement of financial interests

for the preceding calendar year with the commission on or before the May first next in any year in which he holds such a position. Any such individual who leaves his office or position shall file a statement of financial interests covering that portion of the year during which he held his office or position. The commission shall notify such individuals of the requirements of this subsection within thirty days after their departure from such office or position. Such individuals shall file such statement within sixty days after receipt of the notification.

(b) The statement of financial interests shall include the following information for the preceding calendar year in regard to the individual required to file the statement and his spouse and dependent children residing in the individual's household: (1) The names of all businesses with which associated; (2) the names of all individuals with which associated; (3) the names of all employers; (4) the names and addresses of specific clients, patients and customers, except when such information is privileged against disclosure under the law or where the ethical standards of a professional group, society or organization is which the individual is a member, prohibit such disclosure without the consent of the client, patient or customer involved; who provided more than ten thousand dollars of net income including clients and customers who provided more than ten thousand dollars of net income to any business with which the individual was associated, amounts of income not to be specified; (5) the name of securities in excess of ten thousand dollars at fair market value owned by such individual, spouse or dependent children or held in the name of a corporation, partnership or trust for the benefit of such individual, spouse or dependent children; (6) all real property located with the municipality whether owned by such individual, spouse or dependent children or held in the name of a corporation, partnership or trust for the benefit of such individual, spouse or dependent children; (7) the names and addresses of creditors to whom the individual, his spouse or dependent children, individually, owed debts of more than ten thousand dollars; and (8) any leases or contracts with the municipality held or entered into by the individual or a business with which he was associated.

(c) The statement of financial interests filed pursuant to this section shall be a matter of public information.

(d) Any individual who is unable to provide information required under the provisions of subsection (b) of this section by reason of impossibility may petition the commission for a waiver of the requirements.

Section 1-11. Distribution of Code.

The Town Clerk shall cause a copy of this Code of Ethics to be distributed to every public employee and public official within 60 days after enactment of this code. Each public employee and public official shall be furnished a copy before entering upon the duties of his office or employment. A signed receipt for all copies shall be returned to the town clerk and retained on file.